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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057023
Party	Defendant John "Giovanni" Aragona
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of
Trademark Registration No. 4220686
Mark: GIOVANNI'S ALOHA FOODS
Registration Date: October 9, 2012

In the matter of
Trademark Registration No. 4224400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration Date: October 16, 2012

In the matter of
Trademark Registration No. 4232569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration Date: October 30, 2012

In the matter of
Trademark Registration No. 4248595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration Date: November 27, 2012

LUCKYU ENTERPRISES, INC.,) CANCELLATION NO.

Petitioner,) 92057023

vs.)

JOHN "GIOVANNI" ARAGONA,)

Registrant.)

_____)

DEPOSITION OF ALEX M. SONSON,

Taken on behalf of Registrant John "Giovanni" Aragona at
the Offices of Ralph Rosenberg Court Reporters, Inc.,
2460 American Savings Bank, 1001 Bishop Street,
Honolulu, Hawaii 96813, commencing at 10:01 a.m., on
December 3rd, 2014, pursuant to Notice.

1 BEFORE: PATRICIA ANN CAMPBELL, CSR 108
2 Certified Shorthand Reporter
3 State of Hawaii
4

5 APPEARANCES:

6 For Registrant John "Giovanni" Aragona:

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15 For Petitioner LuckyU Enterprises, Inc.:

16 JENNIFER FRASER, ESQ.

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I N D E X

<u>EXAMINATION BY:</u>	<u>PAGE</u>
Ms. Pitts	4, 49
Ms. Fraser	29

EXHIBITS FOR IDENTIFICATION

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1 ALEX M. SONSON,
2 called on behalf of Registrant John "Giovanni" Aragona,
3 was first duly sworn to tell the truth, the whole truth,
4 and nothing but the truth, and testified as follows:

5 EXAMINATION

6 BY MS. PITTS:

7 Q. Good morning, Mr. Sonson.

8 A. Good morning.

9 Q. As you know, we are here for the testimony
10 deposition before the Trademark Trial and Appeal Board
11 for the deposition proceeding between Luckyu
12 Enterprises, Incorporated, doing business as Giovanni's
13 Original White Shrimp Truck, and John Giovanni Aragona
14 regarding the registration of four trademarks.

15 I am going to ask you a series of questions
16 regarding this matter. Please listen to my questions
17 carefully. If you do not understand the questions,
18 please let me know, and I will be happy to rephrase it.
19 The court reporter is here to take down everything that
20 you say, but she can only transcribe what she verbally
21 -- I am sure you understand all of this. Should I
22 continue?

23 A. You can skip the ground rules. I think that I
24 have heard it often enough.

25 Q. Okay, thank you.

1 A. I will abide by them.

2 Q. Okay, all right. So I would like to start out
3 with your knowledge, your personal knowledge about the
4 Giovanni's Shrimp Truck business, both before when it
5 was owned by the Aragonas and when it was -- and after
6 it was transferred to Troy Nitsche.

7 When was the first time that you had ever heard
8 of Giovanni's Original White Shrimp Truck?

9 A. My best recollection is sometime after 1994,
10 between that and 1997 when I drafted a document for Mr.
11 Aragona.

12 Q. Okay, and the Giovanni and the name of the
13 business, who do you know that to refer to?

14 MS. FRASER: Objection, form.

15 A. Giovanni is actually Italian or Sicilian for
16 John, and John is John Aragona. He consulted with me
17 regarding a matter that pertains to his restaurant at
18 the North Shore at Haleiwa, and that's how I got to know
19 him. I visited him at his restaurant, and I ate there
20 with my family, and I can tell you that I kinda like the
21 guy.

22 Q. (By Ms. Pitts) Okay, and did you like the food?

23 A. At the Italian restaurant, I think my family
24 really loved it, but if you are referring to Giovanni's
25 shrimp, that's the best.

1 Q. Okay.

2 A. It was the best when it was prepared by Connie
3 Aragona. When she prepared it, I really have a
4 recollection that it was really, really good at that
5 time.

6 Q. Okay, and how did your relationship with Mr.
7 Aragona proceed until you representing him?

8 A. Well, we were -- we didn't treat each other like
9 an attorney and client at that time. This is prior to
10 him asking me to draft documents for the sale of his
11 business. While he was still -- while I was still
12 dealing with him regarding that restaurant at Haleiwa,
13 it was more like, you know, help me out with this, you
14 know, he'd say, I have this problem, and I would -- I
15 would give him responses, you know, I would answer, and
16 I would give him some advice regarding what to do, and
17 this has nothing to do with the shrimp truck, of course.
18 This was just regarding the other restaurant. And I got
19 to know him then really well, and then soon after that,
20 I mean, well, not soon. Sometime after that, he came to
21 me with the idea of selling his shrimp truck.

22 Q. Okay, and were there any other details that he
23 gave you at that time regarding other business ventures?

24 A. Well, I know --

25 MS. FRASER: Objection, foundation, and,

1 Counselor, I am going to ask because -- and I would like
2 it clarified now because I expect I might have questions
3 on this. Is Mr. Aragona and Connie Aragona, have they
4 waived the attorney client privilege in connection with
5 this case if you are going to be questioning Mr. Sonson
6 about --

7 MS. PITTS: Yes, they have.

8 MS. FRASER: Both?

9 MS. PITTS: Well, Mr. Aragona has, and he
10 was the one that dealt with Mr. Sonson.

11 MS. FRASER: Okay, and we can explore that,
12 but Connie Aragona is also a party to the agreement.

13 MS. PITTS: Right.

14 MS. FRASER: Doesn't she -- has she waived
15 the attorney client privilege?

16 MS. PITTS: Not that I am aware of. I will
17 follow up on that, but I don't -- most of these
18 questions, I will follow up on that.

19 Q. (By Ms. Pitts) I will try to keep it just with
20 what, if you can also, Mr. Sonson, keep it with just the
21 things that happened between you and John.

22 A. All right, just for clarification, my
23 understanding is that I was representing Mr. Aragona. I
24 never represented Connie. Connie was somewhat just
25 doing what John said.

1 Q. Thank you for clarifying that.

2 A. And that's all that is.

3 Q. Right, that's what I thought, but I think that
4 opposing counsel needed to hear that.

5 MS. FRASER: And I can explore that later,
6 but I just wanted to confirm so that I understand what
7 is the subject of permissible questioning, and I can
8 frame my questions appropriately.

9 MS. PITTS: Okay, all right, so we are
10 moving. Let's see, what was the last question I had
11 asked?

12 (The pending question was read back by the
13 court reporter as follows:

14 Question: Okay, and were there any other
15 details that he gave you at that time regarding
16 other business ventures?)

17 MS. FRASER: Objection, form, calls for
18 impermissible narrative.

19 A. If you are asking as far as the time frame goes
20 while we were discussing the sale of the shrimp trucks,
21 yes, I am well aware of what John's plans were, and I am
22 also privy to, I guess, a lot of his plans and how
23 they're going about it and what he is going to do with
24 the money, the proceeds of his sale, his business plan,
25 pretty much, he discussed all of that with me, and I

1 gave input, my input into his -- his business plan.

2 Did we lose you? We lost her.

3 (Discussion off the record.)

4 (The pending answer was read back by the
5 court reporter as follows:

6 Answer: If you are asking as far as the time
7 frame goes while we were discussing the sale of
8 the shrimp trucks, yes, I am well aware of what
9 John's plans were, and I am also privy to, I
10 guess, a lot of his plans and how they're going
11 about it and what he is going to do with the
12 money, the proceeds of his sale, his business
13 plan, pretty much, he discussed all of that with
14 me, and I gave input, my input into his -- his
15 business plan.)

16 MS. FRASER: Now that we are on the record,
17 in case you didn't hear it, I objected to the form of
18 the question and also as asking for impermissible
19 narrative.

20 I would ask my co-counsel just to help
21 coordinate the logistics here if you want to shoot me an
22 e-mail, Dan, if we get disconnected so we can make a
23 note of that immediately.

24 MR. MULLARKEY: Sure.

25 Q. (By Ms. Pitts) All right, so in drafting the

1 asset purchase agreement, that was in time what came
2 next?

3 MS. FRASER: Objection, form.

4 Q. (By Ms. Pitts) What came next in time? Let me
5 rephrase.

6 MS. FRASER: Same objection.

7 A. The -- I did have discussions with Mr. Aragona
8 on the terms of the sale, and I do recall we probably
9 did several drafts. I have a recollection that I sent
10 -- that I even sent the draft to a friend of mine who is
11 better at, you know, drafting contracts than I am, and
12 he did help me with some of the provisions and how to
13 frame it so that we can make sure that -- all I know is
14 that I wanted to make sure that what Dan wanted was
15 there on the contract.

16 Q. (By Ms. Pitts) Okay, and what was this friend's
17 name?

18 A. My friend?

19 Q. Yes, that helped you out?

20 A. His name is Randall Rosenberg.

21 Q. Can you repeat that, please?

22 A. Randall Rosenberg, R A N D A L L, R O S E N,
23 berg, B E R G.

24 Q. Okay, and you said that you wanted to make sure
25 that the terms that John wanted were being put into the

1 contract correctly?

2 A. Yes.

3 Q. Did you --

4 A. I wanted that.

5 Q. Okay.

6 A. I wanted to make sure.

7 Q. Okay, and what specifically were those terms?

8 MS. FRASER: Objection, form.

9 A. Well, the most important thing, I believe, that
10 John was concerned about was he had big plans of
11 bottling the sauce, okay? So he already had, I guess, a
12 manufacturer in California that was going to bottle
13 sauce for him, and he wanted to make sure that he was
14 able to sell his sauce and at the same time be able to
15 provide Troy the sauce to conduct his shrimp business.

16 Q. (By Ms. Pitts) Okay, can you remember anything
17 else that Mr. Aragona was concerned about?

18 MS. FRASER: Objection, form.

19 A. The -- the other thing that I recall is that Mr.
20 Aragona actually wanted to make sure that he was able to
21 conduct business in Hawaii also, and the business that
22 he wanted to do was to sell his sauce, so that's the
23 other thing, and there was a request from him to make
24 sure that he has the rights to his sauce, his business,
25 rather, outside of the State of Hawaii.

1 Q. (By Ms. Pitts) Okay.

2 A. So my job, I guess, was to limit the assets that
3 are being sold to Mr. Troy Nitsche.

4 Q. Okay, so what were the assets that were being
5 sold, and what was excluded from the assets that were
6 being sold?

7 MS. FRASER: Objection, form.

8 A. Well, the -- what was being sold was the two
9 trucks, the inventory, and I guess the training was
10 included, and also that there was a source of sauce.

11 Q. (By Ms. Pitts) Okay.

12 A. This was the tricky part because it had
13 something to do with the recipe. I know that the recipe
14 of the sauce was protected. Apparently, no one else had
15 that recipe, and the idea was just to provide the sauce
16 to Mr. Nitsche, and at the same time give Mr. Aragona
17 the right to conduct business in Hawaii besides the sale
18 of the shrimp or any of those shrimp trucks and the
19 business to the restaurant, to that effect, there's some
20 sales limitation to that.

21 Q. Okay, and do you want to go ahead and turn to
22 Exhibit 1 or Exhibit 2? Sorry. Exhibit 1 is just your
23 notice.

24 A. I don't have that.

25 (Discussion off the record.)

1 (Deposition Exhibit 1 was marked for
2 identification.)

3 MS. PITTS: Okay, let's go ahead and
4 introduce Exhibit 1 as the notice and subpoena provided
5 to both opposing counsel and Mr. Sonson.

6 MS. FRASER: And, Counselor, I just would
7 like to indicate that Exhibit 1 does not have any proof
8 of service, and it does not appear to be signed. Is
9 that the copy that I should have?

10 MS. PITTS: That is the copy that I noticed
11 you with. I served it to Mr. Sonson electronically.

12 MS. FRASER: Mr. Sonson, have you accepted
13 service?

14 THE WITNESS: Yes.

15 Q. (By Ms. Pitts) Actually, before we go to
16 Exhibit 2, a couple of more questions. When you first
17 started with drafting the asset purchase agreement, were
18 you working with Mr. Nitsche as well?

19 MS. FRASER: Objection, form.

20 A. No. I was just working with Mr. Aragona.

21 Q. (By Ms. Pitts) Okay, and do you know if Mr.
22 Nitsche was represented by an attorney?

23 A. I have a very vague recollection as to whether
24 or not he was represented by an attorney.

25 Q. Okay, so did you have any conversations with an

1 attorney, if you remember any conversations with an
2 attorney that was representing him?

3 A. No, I don't --

4 MS. FRASER: Objection, form.

5 A. I don't recall any, at this time, I don't have a
6 recollection whether I spoke to an attorney, although I
7 did -- I can -- there's thoughts in my mind that is
8 looking for that information, but at this point in time,
9 I don't quite recall.

10 Q. (By Ms. Pitts) Okay, that's understandable. It
11 was a long time ago, 1997. All right, now, can we go to
12 Exhibit 2, please?

13 (Deposition Exhibit 2 was marked for
14 identification.)

15 Q. (By Ms. Pitts) All right, so the first thing I
16 wanted to ask you about, the preamble to this says that
17 the seller desires to sell a portion of the assets of
18 the business. Buyer desires to purchase exclusive
19 rights in the State of Hawaii to use the name Giovanni's
20 Aloha Shrimp for the purpose of selling food. The
21 preamble, can you explain why this was put in there?

22 MS. FRASER: Objection, form. Also calls
23 for impermissible narrative.

24 A. Well, the purpose of that, of course, is to
25 introduce what was being done, but the key point, I

1 believe, in there is just that I wanted to make sure
2 that it's a portion of the assets were just being sold,
3 or I tried to limit it to make sure that Mr. Aragona
4 would be able to conduct business as he wanted it.

5 Q. (By Ms. Pitts) All right. Now, if we can go to
6 page two and paragraph one or section number one, it
7 mentions a contingency about the buyer being able to
8 lease property at Haleiwa and Kahuku. Did you do any
9 work at all on that lease transfer?

10 MS. FRASER: Objection, form, leading.

11 A. No, I did not. John was advised that he needed
12 to do this in order for the sale to go through.

13 Q. (By Ms. Pitts) Okay, and do you know any other
14 details as to whether or not he was able to do that?

15 MS. FRASER: Form, leading, narrative.

16 A. I can't recall whether he did or not.

17 Q. (By Ms. Pitts) Okay.

18 A. I can just assume that it was done.

19 Q. All right. On page, I'm sorry, the pages are
20 not numbered. We are looking at section C,
21 contingencies, and C, paragraph C on the next page.

22 A. Yes, I see paragraph C.

23 Q. Okay. The copy that I was provided, we got it
24 from the court records from Connie's case, and I am not
25 sure, I believe that Mr. Nitsche provided the copy. Do

1 you know why paragraph two C would have been circled
2 there?

3 MS. FRASER: Objection, form.

4 A. No, I don't know why the two C or the markings
5 are there on the page that's circled, I don't have any
6 idea why those are circled.

7 Q. (By Ms. Pitts) Okay, all right. Let's see.
8 All right, in section five, representation of seller to
9 buyer, and then paragraph A. I'm sorry, excuse me. The
10 next page, paragraph E, this warrants that the seller is
11 the only individual or entity --

12 Actually, Mr. Sonson, can you read that, that
13 paragraph E?

14 A. Seller is the only individual or entity that
15 owns any rights to the Giovanni Scampi and Giovanni's
16 Hot and Spicy Sauces, and the seller has the full right
17 to contract with the buyer as to any agreement regarding
18 restricting the sale and use of said sauces.

19 Q. Okay. Can you explain why this was put into the
20 contract?

21 MS. FRASER: Objection, form.

22 A. I guess that is a representation that I thought
23 I had to put in there because they are -- in case
24 someone questions, you know, it is there in writing that
25 they are the owners, and, second, that they -- the

1 sellers have that right to restrict the sale and use of
2 the sauces.

3 Q. (By Ms. Pitts) So was this paragraph put in at
4 the request of either of the parties, or was it you?

5 MS. FRASER: Objection, form, leading.

6 A. I don't recall specifically if they requested
7 for this particular paragraph. It is my -- the words
8 are mine, but the idea was -- of what it does was
9 discussed with Mr. Giovanni, and he agreed, I understand
10 -- I believe that he agreed that this is what he wanted.

11 Q. (By Ms. Pitts) All right, so if we can, go to
12 the paragraph ten, two pages over.

13 A. Yes, I am there.

14 Q. And then section A, the restrictions, can you
15 state what those restrictions are?

16 MS. FRASER: Objection, form, leading.

17 A. Well, I am reading ten A, and the restriction on
18 the buyer here is that he has to sell, I guess, the
19 plates. The way that Giovanni was selling the shrimp at
20 his trucks was very simple. He explained it to me how
21 effective it was. Two scoops of rice, the shrimp had to
22 be a large size, butterflied, butterflied and deveined,
23 you know, and that it has to have ten to twelve of these
24 on each plate. That's it.

25 Q. (By Ms. Pitts) Okay.

1 A. Ten bucks.

2 Q. Have you visited the shrimp truck and eaten at
3 the shrimp truck since execution of this asset purchase
4 agreement?

5 MS. FRASER: Objection, leading.

6 A. Yes, I have, and a lot of times, I'd bring a lot
7 of people. You know, when I take friends out to the
8 North Shore, we always stop there. And I -- and I'm --
9 I recall always talking about John to tourists or, you
10 know, friends that I would be eating with.

11 Q. (By Ms. Pitts) And they knew who he was?

12 A. John?

13 Q. Yes.

14 A. No. Only what I tell them.

15 Q. All right.

16 A. But I tell them who Giovanni was, that he was a
17 character, because he was always out, you know, it was
18 in a tent at that time. The shrimp truck was there, it
19 was dirt and a tent. When Mr. Nitsche took over, he --
20 he put a permanent structure there, and it is very
21 different, so it's more organized, a lot more outlets
22 out there now. It's very different in that sense.

23 Q. So to your knowledge, have the restrictions in
24 paragraph A been followed?

25 MS. FRASER: Objection, leading,

1 foundation.

2 A. They -- the plates remain the same, two scoops
3 of rice, and it has ten to twelve shrimps in size. As
4 far as I can tell, as far as the amount, which is the
5 restriction particularly here, it says, on A was
6 followed. As far as the second portion of it, though, I
7 am not sure. I don't know what sauce they're using, but
8 it's a little different. It's not -- maybe because I
9 have eaten there so many times, I can tell that there is
10 a difference.

11 Q. (By Ms. Pitts) What kind of sauces are they
12 selling at this point?

13 A. Well, they are selling several sauces, but I
14 always eat, and I always enjoy the scampi and the hot
15 and spicy. The difference in both recipes is that it
16 doesn't taste the same, it just doesn't taste the same.
17 I guess when Connie was doing it, there was just a
18 little something that's missing that I can tell. I
19 don't like it as much, but it is still the best shrimp
20 among all the shrimp trucks that's out on the North
21 Shore right now.

22 Q. So how is the quality of the food they serve?

23 A. I like John's and Connie's food, you know, their
24 version of the recipe much better.

25 Q. How do you feel about the quality of

1 Petitioner's food at this point?

2 MS. FRASER: Objection, form.

3 A. It's still better than what's out there because
4 the sauce is still good, although it's not -- it's -- it
5 doesn't make you want to go, ahhh, really, really good,
6 no, you know? It's still the best out there.

7 Q. (By Ms. Pitts) Okay, all right. All right, the
8 last sentence of that same paragraph of section ten,
9 paragraph A, it says the joint ownership of the trade
10 name Giovanni's Aloha Shrimp shall apply only to the
11 State of Hawaii, and buyer covenants and agrees not to
12 register said trade name outside of the State of Hawaii.

13 Can you explain the details behind this?

14 MS. FRASER: Objection, form, calls for
15 impermissible narrative.

16 A. Yes, I can. This was my doing. The idea was
17 from John, but I tried to put it on paper. We discussed
18 this as a limitation, and it started out to be a lot
19 more restrictive, actually, than this because I told
20 John that, and he wanted, actually, to do business in
21 the other islands, just in case. But it ended up like,
22 okay, we'll just limit it to Hawaii and just to make
23 sure that he can do whatever he wants with the business
24 outside of Hawaii, and as far as the trade name, John
25 just wanted to make sure and I tried to help out by

1 putting this language that the buyer will not be able to
2 register that outside of Hawaii.

3 Q. (By Ms. Pitts) Okay.

4 A. And I do recall, also, that I did not agree with
5 the joint ownership with John, but I believe that that
6 was the agreed upon term with the buyer, with Mr.
7 Nitsche, that they wanted the term. That was not my
8 idea. That was John's and Mr. Nitsche's idea.

9 Q. Okay, and let's see. If you can turn to section
10 fifteen, the noncompetition clause, was this at the
11 request of the buyer, or was this at the request of --
12 sorry. Who decided that the noncompetition clause
13 should be included in the agreement?

14 MS. FRASER: Objection, form.

15 A. I believe it was my idea. John did not know
16 there was such a thing. If I recall, it was my idea to
17 further help him in order for him to conduct business.
18 I had knowledge at that time of their plans, you know,
19 big, big plans, including frozen foods and restaurant
20 type of business, and I believe that that's the reason
21 why I wanted to make sure that they would be able to
22 conduct that according to their plans.

23 Q. (By Ms. Pitts) Okay, if you can turn to the
24 exhibit attachments on the exhibit? And this is a
25 breakdown of what was being transferred.

1 MS. PITTS: Trish, if you could, I want to
2 go ahead and introduce Exhibit 4.

3 (Deposition Exhibit 4 was marked for
4 identification.)

5 Q. (By Ms. Pitts) Okay, so did you get to the
6 appendix of the asset purchase agreement?

7 A. Yes, I am familiar with the attachment to
8 Exhibit 2.

9 Q. Okay, so if you look at Exhibit A, the first
10 page, it has the list, a 1952 Chevrolet truck. Can you
11 remember or do you recall what this looked like?

12 MS. FRASER: Objection, form, leading.

13 A. I recall the very colorful truck because not --
14 you know, even before I saw it, I saw pictures of it,
15 that's why. John used to show me tourist's, tourist's
16 guide or tourist books, and there were write-ups
17 regarding the white truck, and the picture was there.
18 It was -- I don't know. I didn't like the looks of it,
19 but I guess it's unique. It had a lot of writing on the
20 side. It was white. It has a lot of graffiti or
21 people's signatures, you know, all over the truck.

22 Q. What time frame was that that he showed you the
23 pictures, that John showed you the pictures?

24 MS. FRASER: Objection, form.

25 A. That was before I even started drafting the

1 asset purchase agreement.

2 Q. (By Ms. Pitts) Okay, all right, so if you can
3 look at Exhibit 4 and compare the photos of Exhibit 4
4 with the Exhibit A of the asset purchase agreement?

5 A. Yes.

6 Q. Okay, is this an accurate representation of the
7 items, pictures of the items that are listed here?

8 MS. FRASER: Objection, form, leading.

9 A. Well, Exhibit 2 is an attachment with a lot of
10 stuff, but if you are talking about whether or not that
11 is the representation of the 1952 Chevrolet truck, I do
12 believe that that's what it looks like.

13 Q. (By Ms. Pitts) Okay, and then if you go down to
14 the exhibit of the asset purchase agreement where it
15 says trailer sign, it's near the bottom there of the
16 second column.

17 A. Trailer sign. Yes, I see trailer sign.

18 Q. Okay, can you look at Exhibit 4, the first photo
19 of Exhibit 4?

20 A. I am familiar with this --

21 MS. FRASER: Objection, form. Is there a
22 question pending?

23 Q. (By Ms. Pitts) Is the picture in -- how do you
24 feel about --

25 What are your thoughts about the picture in

1 Exhibit 4?

2 MS. FRASER: Objection, form.

3 A. Which picture? There are three pictures.

4 Q. (By Ms. Pitts) Okay, the first picture, the
5 first picture of the sign on the trailer.

6 MS. FRASER: Same objection.

7 A. I see a picture of a sign on what seems like a
8 trailer that has wheels on it. I am familiar with the
9 sign, however, I have no recollection whether that's the
10 original sign, but I know that there was a sign that
11 says, you know, prior to you -- prior, you know, I don't
12 know how many feet or yards away from the right turn,
13 well, to the parking area where the restaurant -- where
14 the truck was really parked. But, yes, you can see that
15 on the side of the road as you head towards Kahuku, I
16 guess. If you follow Kam Highway, it would be on the
17 side of the road prior to hitting the right turn where
18 you park, and then that's where the shrimp truck is
19 located.

20 Q. (By Ms. Pitts) Okay, and was this similar to
21 the sign that was included in the asset purchase
22 agreement?

23 MS. FRASER: Objection, form and leading.

24 A. It is similar.

25 Q. (By Ms. Pitts) Okay. Do you recall whether or

1 not it says the same things, has the same markings on
2 it?

3 MS. FRASER: Objection, form and leading.

4 A. The Original White Shrimp Truck is correct.

5 Q. (By Ms. Pitts) Okay, what is your recollection
6 of when Giovanni originally started using that sign?
7 Was it in connection with this business?

8 MS. FRASER: Objection, form, narrative.

9 A. Time frame would be before he had the idea of
10 selling it because I actually had -- you know, I visited
11 it and ate at his Kahuku shrimp truck site prior to him
12 selling it, and I do recall that there were other trucks
13 already there, and the sign did stick out as the
14 Original White Shrimp Truck.

15 Q. (By Ms. Pitts) All right. Now, if we can
16 please go to Exhibit 3?

17 (Deposition Exhibit 3 was marked for
18 identification.)

19 Q. (By Ms. Pitts) All right, who drafted this
20 agreement?

21 A. I believe my office did it.

22 Q. Okay.

23 A. And I know that I did it.

24 Q. Okay, all right, let's see. Do you recall John
25 coming to you in 2010 looking for a copy of this

1 agreement?

2 MS. FRASER: Objection, form, leading.

3 A. Yeah, after almost, you know, like, I don't
4 know, I couldn't recall how long it was since I saw
5 John, but he did come to Hawaii for a vacation, and he
6 was looking for his records.

7 Q. (By Ms. Pitts) Okay, and were you able to
8 provide them to him?

9 A. No, the records that I had in my office couldn't
10 be found. I usually store them in storage. All closed
11 cases I stored in storage, and I did look, you know, for
12 his file, and I had my staff look for his file, and we
13 couldn't find it.

14 Q. What --

15 A. There is --

16 Q. Go ahead.

17 A. The computer that we have, however, also has a
18 lot of, I guess, the work that we have compiled, and I
19 believe that the exhibit that I am looking at was found
20 by my staff and was given to John.

21 Q. Okay, what is your firm's document retention
22 policy?

23 A. We just follow what we are supposed to do, which
24 is seven years, you know, we have to keep our documents
25 for seven years.

1 Q. Okay.

2 A. And after that, we destroy them.

3 Q. Okay. What do you recall about this agreement,
4 drafting this agreement, the reason behind drafting it?

5 MS. FRASER: Objection, form, calls for
6 narrative.

7 A. Well, you know, all I know is that John came to
8 me and says, yeah, I want some changes. I'm not sure if
9 it is his idea of the -- I don't know if it was the
10 attorney of the other side or the buyer's side wanted
11 some changes, and as he told me about the changes that
12 he wanted, I tried to put it on paper, and I believe
13 this was the product of that.

14 Q. (By Ms. Pitts) All right, do you remember
15 anything of paragraph one being --

16 Can you explain paragraph one, why it changed
17 the original agreement?

18 MS. FRASER: Objection, form, leading.

19 A. He wanted that change because the buyer wanted
20 that to make sure that he is on the lease.

21 Q. (By Ms. Pitts) Okay. Do you know if they were
22 able to get the lease transferred as first agreed?

23 MS. FRASER: Objection, form, leading.

24 A. After this document was given to John, I have --
25 I have no recollection as to whether or not they had any

1 problems after that. John only comes to me when he has
2 a problem --

3 Q. (By Ms. Pitts) Yes.

4 A. -- so I just -- I assumed that everything was
5 fine.

6 Q. Me and you both. All right, let's see. So do
7 you know, did the parties sign this agreement?

8 MS. FRASER: Objection, form, leading.

9 A. I can't recall how this agreement was signed. I
10 did have follow-up conversations with John, and
11 everything seems to have been fine, so the deal went
12 through, and everything's done, so I'm just assuming
13 that everything was fine. He disappeared after that.

14 Q. (By Ms. Pitts) Okay, all right. All right,
15 let's see.

16 A. Oh, I'm sorry. I recall the reason I know
17 everything was fine is because he paid me.

18 Q. Excuse me, what? You recall what?

19 A. Because he paid me, so that was clear indication
20 to me that everything was fine. I didn't get paid in
21 advance. I got paid after everything was done.

22 MS. PITTS: Okay, all right. You know
23 what? I think that's about all that I have for you,
24 actually. Yes, that's it. Jennifer, it's all you.

25 MS. FRASER: Okay, thank you.

1 (Recess taken 10:56 a.m. to 11:00 a.m.)

2 MS. FRASER: Okay, we are back on.

3 EXAMINATION

4 BY MS. FRASER:

5 Q. Mr. Sonson, what trademark experience do you
6 have?

7 A. None. I don't normally do that. I only had,
8 prior to John, I had handled a case for a driver for a
9 handicap transport, in which case, that would be the
10 only one that I litigated. Aside from that and John's,
11 I haven't done any more.

12 Q. Have you ever filed any trademark applications?

13 A. Never.

14 Q. Have you ever taken any legal courses on
15 trademark law?

16 A. I don't recall. I don't think so.

17 Q. For the case that you mentioned you litigated --

18 A. Yes.

19 Q. -- what was the subject matter generally of that
20 case?

21 A. That was the use of the word Handi-Van.
22 Handi-Van was not registered. However, the City and
23 County contractor, the City and County of Honolulu has a
24 contractor, they operate the Handi-Van services. And my
25 client was an operator of vans that would transport

1 people with disabilities, however, these people with
2 disabilities were in a special program that the State
3 operated. It was a Medicaid waiver program, and they
4 were allowed to pick up these individuals from homes all
5 over Honolulu or the State to take them to hospitals,
6 clinics, doctors, take them to outings, et cetera,
7 instead of going with the Handi-Van.

8 My client used term Handi-Van, and because of --
9 because it sounded like or it looked exactly like the
10 Handi-Van business, they filed a lawsuit, and I did
11 research on it, I defended it, and, basically, I said
12 that it's not filed, it's -- it's not registered, it's
13 not a trademark. However, they countered with -- they
14 argued that it was used and developed in the marketplace
15 because they have used it for years and that it is
16 confusing to people when they make telephone calls and
17 they think it's the Handi-Van. So we settled this case.

18 Q. When was this case?

19 A. I have no recollection right now as to when it
20 was. It was --

21 Q. Was it --

22 A. -- a while back.

23 Q. I'm sorry. Was it after you drafted the asset
24 purchase agreement for Mr. Aragona?

25 A. I can't tell you. It could be before or after,

1 though, but that's the only --

2 Q. Was it in the past fifteen years?

3 A. Oh, yes.

4 Q. So it was after when you drafted the asset
5 purchase agreement in 1997?

6 A. Well, it could be. Like I said, I don't recall.

7 Q. How many hours did you spend approximately in
8 connection with that litigation?

9 A. I spent a lot of research on it, more than going
10 to court, and I think the solution to that was I coined
11 a different term called Handi-Trans and changed it from
12 Handi-Van to Handi-Trans, and it is being used out there
13 now, but it wasn't trademarked either.

14 Q. How many trademark licenses have you been
15 involved in drafting?

16 A. None.

17 Q. Has Mr. Rosenberg had any trademark experience,
18 to your knowledge?

19 A. Not to my knowledge.

20 Q. Do you have a retainer agreement with Mr.
21 Aragona?

22 A. No. I treated him as a -- you know, he didn't
23 have any money, and I -- I really was just trying to
24 help me out. In the end, though, he was nice enough to
25 give me money.

1 Q. Are you still representing Mr. Aragona?

2 A. Not for anything, but he calls me with -- I
3 recall if he wants anything, he would call me anyway. I
4 don't represent him, though. I don't have a case
5 ongoing with him right now.

6 Q. When was the last time Mr. Aragona contacted you
7 for advice?

8 A. It was after 2010, I believe.

9 Q. In what type of matter did Mr. Aragona contact
10 you after 2010 for advice?

11 A. I don't think it was for advice. He contacted
12 me looking for his documents and asking me to keep
13 looking and requesting copies if I find them.

14 Q. Has Mr. Aragona or anyone on his behalf ever
15 asked you to raise an issue regarding the asset purchase
16 agreement with Troy Nitsche, Luckyu, or Nitsche
17 Enterprises?

18 A. I'm sorry, I don't understand your question
19 regarding raise an issue. What do you mean?

20 Q. Has Mr. Aragona ever indicated there was a
21 problem with Troy Nitsche, Luckyu, or Nitsche
22 Enterprises?

23 A. He indicated that he wanted the documents
24 because he has an ongoing case with Mr. Troy Nitsche,
25 the person that he identified long ago and I recall as

1 the buyer.

2 Q. When he indicated that he has a case with Troy
3 Nitsche, do you understand that to be this current
4 matter at the Trademark Trial and Appeal Board?

5 A. I do not.

6 Q. Did you ever talk to Ms. Pitts, counsel for Mr.
7 Aragona, regarding this lawsuit?

8 A. I spoke with Mr. Aragona's counsel because --
9 for the same reason why Mr. Aragona was contacting me,
10 yes.

11 Q. When did you speak with counsel?

12 A. I don't recall the exact dates, but the last six
13 months, maybe.

14 Q. Did counsel provide you any copies of the
15 documents we are reviewing today?

16 A. Yes --

17 Q. When did --

18 A. -- I requested copies.

19 Q. When did counsel provide you with copies of the
20 exhibits that we are looking at today?

21 A. Three hours ago.

22 Q. Did counsel indicate what types of questions
23 that she might ask you at your deposition today?

24 A. I actually asked what she wanted from me, and
25 she wanted me to recall what happened or try to recall

1 the events that led to these two documents, the two
2 documents which is identified as Exhibit 2 and Exhibit
3 3.

4 Q. Did counsel tell you what she believed the
5 issues were in this case?

6 A. No.

7 Q. At the time of drafting the asset purchase
8 agreement, did Mr. Aragona have any plans to continue in
9 the shrimp truck business?

10 A. Yes, but that's not the only business, actually.
11 He wanted to continue doing business, but not this one.
12 He wanted to do everything except this one, which is
13 Kahuku and Haleiwa shrimp trucks. He wanted to do it
14 somewhere else.

15 Q. How do you know Mr. Aragona wanted to continue
16 with the shrimp truck business?

17 A. He told me.

18 Q. Did Mr. Aragona want to continue in the shrimp
19 truck business under any of the Giovanni's names?

20 A. Yes.

21 Q. Does the asset purchase agreement prohibit Mr.
22 Aragona from running a shrimp truck business under the
23 name Giovanni's in Hawaii?

24 A. Not specifically. It was that he was not to --
25 to do business selling in the shrimp truck in the State

1 of Hawaii and using those sauces. I believe that's what
2 it -- that's what the asset purchase agreement limits.

3 Q. Generally, to your understanding, was the
4 purpose of the asset purchase agreement to sell his
5 Giovanni's shrimp trucks so that he could continue to
6 sell sauces?

7 A. My understanding is that he wanted money from
8 the sale of proceeds of these two trucks and had plans
9 for a bigger business, including the production of
10 sauces, bottling them, restaurants, and I guess opening
11 chains, same, you know, duplicating the business out in
12 the mainland.

13 Q. At the time of the sale of the Giovanni shrimp
14 trucks by the Aragonas to Nitsche Enterprises, did the
15 shrimp trucks themselves have the name Giovanni's on
16 them?

17 A. Yes.

18 Q. Mr. Sonson, do you understand the difference
19 between a trade name and a trademark?

20 A. I don't recall. At one time I did. I just
21 don't recall right now.

22 Q. At the time of the asset purchase agreement, did
23 you understand the difference between a trade name and a
24 trademark?

25 A. I believe so, yes.

1 Q. Mr. Sonson, did you ever have any dealings with
2 Connie Aragona?

3 MS. PITTS: Objection, asked and answered.

4 A. Connie Aragona contacted me because she wanted
5 me to represent her on a criminal case. She wanted me
6 to represent her regarding her criminal case.

7 Q. (By Ms. Fraser) What criminal case did Ms.
8 Aragona ask you to represent her with?

9 A. She was charged, I believe she was -- I don't
10 know the full story, but she was charged for a criminal
11 matter because she tried to forcefully obtain the
12 business back from Troy Nitsche.

13 Q. When you say forcefully obtain the business back
14 from Troy Nitsche, do you mean the Giovanni shrimp truck
15 business back from Troy?

16 A. I believe so.

17 Q. At the time you were drafting the asset purchase
18 agreement, what trademarks were the Aragonas using?

19 A. Giovanni's Original White Shrimp Truck. The
20 name just Giovanni also, it was -- he was very
21 protective it was just Giovanni.

22 Q. Were the Aragonas using Giovanni's Aloha Shrimp
23 at the time of the asset purchase agreement?

24 A. I don't recall.

25 Q. Were the Giovanni's -- excuse me.

1 Were the Aragonas using Giovanni's White Shrimp
2 Truck at the time of the asset purchase agreement?

3 A. They were the -- I recall that he had Giovanni's
4 -- just the word Giovanni's is what they were using, and
5 it was Original White Shrimp Truck. I'm not sure
6 whether or not that was a trademark, trade name,
7 whatever. All I know is that Giovanni's has a claim on
8 the Original White Shrimp Truck because -- because there
9 are other copycats out on the North Shore also saying
10 that they are the original or that they are the shrimp
11 truck.

12 Q. What is your basis for your understanding that
13 the Aragonas were using Giovanni's Original White Shrimp
14 Truck?

15 A. There was a sign.

16 Q. Is the sign the only basis for your
17 understanding that the Aragonas were using Giovanni's
18 Original White Shrimp Truck?

19 A. Yes.

20 Q. If I could direct your attention to Exhibit 4,
21 Mr. Sonson?

22 A. Yes.

23 Q. If you would look at the first photograph in
24 Exhibit 4 for Giovanni's Original White Shrimp Truck?

25 A. Yes.

1 Q. Do you have personal knowledge of the Aragonas
2 constructing this sign in Exhibit 4?

3 A. No. I don't recognize or I did not testify that
4 this is the sign that I originally saw, but I can
5 testify to the words, that Giovanni's put a sign that
6 said Giovanni's Original White Shrimp Truck.

7 Q. When did the copycat shrimp trucks appear on the
8 North Shore?

9 A. Prior to me knowing Mr. Giovanni and afterwards.
10 There's a lot more now than before.

11 Q. Are you sure it was Mr. Aragona who added the
12 word original to Giovanni's White Shrimp Truck?

13 A. I didn't question at that time who did it, I
14 don't know who, but I recall the words that existed at
15 that time when I first went to visit Mr. Aragona at his
16 work site in Kahuku.

17 Q. Why didn't you include the trademark Giovanni's
18 Original White Shrimp Truck in the asset purchase
19 agreement?

20 A. I don't know. It was a sign. I thought it
21 referred to the truck.

22 Q. Is it possible that Mr. Nitsche has created the
23 sign we are looking at at Exhibit 4, the first photo,
24 for Giovanni's Original White Shrimp Truck?

25 A. The construction, I know that I don't recognize

1 it as the -- something that I can recall that existed
2 there prior to the sale. The words I recall because
3 there was already people trying to take business away
4 from Mr. Aragona at that time. He was very popular
5 because he was covered in the articles in the tourist
6 books.

7 Q. If there were copycats before Mr. Aragona asked
8 you to draft the asset purchase agreement, why didn't
9 you include Giovanni's Original White Shrimp Truck in
10 the asset purchase agreement?

11 A. If it -- it had no -- at that time, I can --
12 right from sitting here right now, I don't recall why I
13 did not. I can assume that I did not know the
14 significance of putting that in. I didn't know that it
15 was something that needed protecting, and so I guess if
16 it is important, then I failed my client.

17 Q. When did Mr. Aragona show you the tourist guide
18 books that you said had the name Giovanni's Original
19 White Shrimp Truck in it?

20 A. When he was discussing his business, how popular
21 he was.

22 Q. What time frame was this that Mr. Aragona said
23 that he was popular?

24 A. That would be before him indicating to me that
25 he wanted to sell it.

1 Q. What tourist guide books were they that you
2 looked at with Mr. Aragona?

3 A. The one that he showed me, I don't know the name
4 of the magazine, but there was a picture of it and an
5 article regarding the White Shrimp Truck.

6 Q. Are you sure it said Giovanni's Original White
7 Shrimp Truck in the guide book?

8 A. It had a picture of the truck with Giovanni's
9 name and graffiti on it, so I recall that.

10 Q. Are you certain whether the name Giovanni's
11 Original White Shrimp Truck appeared in the tourist
12 guide book that you looked at with Mr. Aragona?

13 A. I am not sure whether Original White Shrimp
14 Truck was included, the Giovanni's Original White Shrimp
15 Truck was included in the article, no, I'm not sure.

16 Q. When was the last time that you visited the
17 shrimp trucks now operated by Troy Nitsche?

18 A. I would say within the last three months.

19 Q. How frequently do you visit the shrimp trucks
20 operated by Troy Nitsche?

21 A. Prior to that, almost monthly.

22 Q. Have you noticed changes in the physical food
23 truck since the Aragonas sold the business --

24 A. Yes.

25 Q. -- to Mr. Nitsche?

1 A. I'm sorry. Yes.

2 Q. What changes have you noticed in the food trucks
3 since the Aragonas sold the business to Mr. Nitsche?

4 A. It looks a lot more permanent, the way they have
5 it set up now.

6 Q. Have the menu items changed since the Aragonas
7 sold the Giovanni's shrimp trucks to Mr. Nitsche?

8 A. Yes, I can only recall that the original
9 Giovanni's, when Mr. Aragona had it, I can only recall
10 two recipes, one scampi and one very, very hot, spicy,
11 and I am very familiar with it because he gave me a long
12 story about why it is spicy and why it is good. I
13 recall the word pidipidi.

14 Q. Other than the shrimp truck services the
15 Aragonas were providing under the Giovanni's names at
16 the time of the asset purchase agreement, were there any
17 other products being provided by the Aragonas at the
18 time?

19 A. No. I only recall two products, Scampi and Hot
20 and Spicy We Mean It. It's really spicy. I took a
21 friend from Latin America there, and he cried.

22 Q. And perhaps we can get a spelling of that after.
23 But other than the scampi and We Meana --

24 A. We Mean It. We Mean It.

25 Q. Oh, We Mean It?

1 A. Yeah, We Mean It.

2 Q. And let me clarify, when you say Scampi and We
3 Mean It were provided at the Giovanni's truck, do you
4 mean as food plates?

5 A. Yes.

6 Q. Did you represent Mr. Aragona in his divorce
7 from Connie Aragona?

8 A. No. Can I just clarify no? It should be I
9 don't recall. I don't think so, but because I often
10 forget, you know, unless I check, I don't know. I can't
11 say positively that I did not discuss that matter with
12 him. We may have some discussions.

13 Q. Okay, thank you for clarifying.

14 Mr. Sonson, if I could ask you to look at
15 Exhibit 3?

16 A. Yes.

17 Q. Is it true you do not recall if Exhibit 3 was
18 signed by all the parties?

19 A. Yes.

20 Q. Do you have any -- strike that.

21 Mr. Sonson, how long do you retain your client
22 files?

23 A. Seven years, approximately seven years.

24 Q. When you say seven years --

25 A. It could --

1 Q. -- what is the seven years running from?

2 A. From its closing, and the reason I said
3 approximately is because it could be longer.

4 Q. When you say seven years from closing, does that
5 mean when a matter is concluded?

6 A. Yes.

7 Q. Did you consider the asset purchase agreement in
8 Exhibit 2 to be concluded?

9 A. The drafting and signing was concluded, however,
10 it did not -- the matter did not end.

11 Q. When you say the matter did not end, what do you
12 mean?

13 A. It had contingencies and payments needed to be
14 -- payments were needed to be exchanged, and also I was
15 really expecting one other thing. I recall that my
16 office was supposed to retain the recipes, so it was
17 still out in the open. After we -- after the asset
18 purchase agreement was done, it had -- it was still
19 open. Those things were not done.

20 Q. Did the Aragonas receive the payment set forth
21 in the asset purchase agreement, Exhibit 2?

22 A. My belief is that they got paid since John came
23 to me, and he said it's done, he gave me my money and
24 thanked me.

25 Q. Why did both John and Connie Aragona sign the

1 asset purchase agreement?

2 A. They were identified as the sellers. They were
3 operating the business together, and that's why they
4 needed to sign.

5 Q. If I could direct your attention to two C of the
6 asset purchase agreement at Exhibit 2?

7 A. Yes.

8 Q. Did the asset purchase agreement provide for
9 joint ownership of the Hawaiian trade name for
10 Giovanni's Aloha Shrimp so that the Aragonas could sell
11 sauces?

12 A. I don't recall the specific reason for that. I
13 don't recall that that was my idea or John's idea. My
14 suggestion, as I recall, was that John was always --
15 that he retains ownership and to limit what he sells to
16 Mr. Nitsche.

17 Q. After the asset purchase agreement was drafted
18 and signed, did John Aragona continue to offer food
19 truck services?

20 A. After it was signed, I don't recall whether or
21 not that would be the case. I do understand that he had
22 to train Troy, and he was actually training Troy Nitsche
23 prior to -- I mean, even while he were drafting this, I
24 understand that he was already there in the truck
25 training and learning the business, so to speak.

1 Q. Other than the training you referenced from the
2 asset purchase agreement, has John Aragona offered any
3 food truck services since that time?

4 A. My understanding is that when John turned over
5 the food trucks to Mr. Nitsche and the training is
6 concluded, he will not conduct that same type of truck
7 business here in the State of Hawaii.

8 Q. And just to clarify, to your understanding, do
9 you know if John Aragona has provided any food truck
10 services since the asset purchase agreement in any
11 State?

12 A. No.

13 Q. Mr. Sonson, for the photographs in Exhibit 4, do
14 you know who took any of those photographs?

15 A. No.

16 (Discussion off the record.)

17 MS. PITTS: Okay, the last thing I heard
18 was a question about John, and he wasn't doing any food
19 truck businesses since the APA.

20 THE REPORTER: And the answer to that
21 question was no.

22 MS. FRASER: Okay, and then I had another
23 question for the photographs. I can ask that question
24 again.

25 Q. (By Ms. Fraser) Mr. Sonson, do you know who

1 took the photographs in Exhibit 4?

2 A. No.

3 Q. Do you know the exact dates for any of the
4 photographs depicted in Exhibit 4?

5 A. No.

6 Q. Do you think John Aragona is the current owner
7 of the Giovanni's Shrimp Trucks here in Hawaii?

8 A. I know that he is not the owner of the shrimp
9 trucks in Hawaii.

10 Q. Why is that?

11 A. There was the sale of those trucks that I am
12 familiar with, and since my many, many visits to the
13 truck, I could tell that someone else is operating it,
14 not John.

15 MS. FRASER: And I just want to clarify,
16 could the court reporter read back the beginning of his
17 answer?

18 (The record was read back by the court reporter
19 as follows:

20 Question: Why is that?

21 Answer: There was the sale of those trucks that
22 I am familiar with, and since my many, many
23 visits to the truck, I could tell that someone
24 else is operating it, not John.)

25 MS. FRASER: And I'm sorry, if I could ask

1 you to read back the previous question and answer just
2 to make sure that I understood it.

3 (The record was read back by the court reporter
4 as follows:

5 Question: Do you think John Aragona is the
6 current owner of the Giovanni's Shrimp Trucks
7 here in Hawaii?

8 Answer: I know that he is not the owner of the
9 shrimp trucks in Hawaii.)

10 MS. FRASER: Keep going.

11 (The record was read back by the court reporter
12 as follows:

13 Question: Why is that?

14 Answer: There was the sale of those trucks that
15 I am familiar with, and since my many, many
16 visits to the truck, I could tell that someone
17 else is operating it, not John.)

18 Q. (By Ms. Pitts) Mr. Sonson, when has Mr. Aragona
19 visited Hawaii, to your knowledge, since he moved?

20 A. I can only -- I can recall with certainty at
21 least once that I saw him, but I also recall that there
22 were phone calls, but I am not sure if he was in Hawaii
23 at that time.

24 Q. Mr. Sonson, if I could direct your attention to
25 paragraph ten of Exhibit 2, the asset purchase

1 agreement?

2 A. Yes.

3 Q. Is it true that paragraph ten references the
4 trade name in ten A?

5 A. It does. It does.

6 Q. Does it reference a trademark in paragraph ten
7 A?

8 A. No.

9 Q. Mr. Sonson, if I could direct your attention to
10 paragraph twenty-one, section C?

11 A. Yes.

12 Q. Is it true that pursuant to paragraph twenty-one
13 C, the buyer has full rights to use the name Giovanni's
14 Aloha Shrimp without any limitations placed upon the
15 buyer?

16 A. That's what it says in twenty-one C.

17 Q. Mr. Sonson, did Mr. Aragona ever express any
18 disappointment with the way that the asset purchase
19 agreement at Exhibit 2 was drafted?

20 A. No.

21 Q. Mr. Sonson, have you ever been disbarred?

22 A. Yes. No. Suspended. I don't think I was
23 disbarred. I was suspended for three months.

24 Q. Are you currently in good standing as an
25 attorney with the State?

1 A. After the three months was over, yes.

2 MS. FRASER: Counselor, I don't have
3 anything further at this time.

4 MS. PITTS: I just have a couple more.

5 FURTHER EXAMINATION

6 BY MS. PITTS:

7 Q. As to what you said about John's current or
8 after the asset purchase agreement, did John ever
9 express or speak to you about his intentions to run
10 shrimp trucks on the mainland?

11 MS. FRASER: Objection, form, leading.

12 A. If the question is whether he expressed
13 intentions to operate a shrimp truck business on the
14 mainland, the answer is yes.

15 MS. PITTS: Yes, I think that's it.

16 MS. FRASER: And then, Counselor, just one
17 more matter. We would move to strike any of the leading
18 questions and subsequent testimony as well as the
19 impermissible narrative, and that's something that we
20 can raise with the Board later, but I wanted it on the
21 record because I did raise those objections throughout.

22 MS. PITTS: All right, if you had provided
23 more information in terms of what exactly you were
24 objecting to, I could rephrase.

25 MS. FRASER: Counselor, we are not

1 permitted to have speaking objections during
2 depositions. We are only permitted to simply state the
3 basis for the objection, and that was done throughout
4 the deposition.

5 MS. PITTS: All right, is there anything
6 else?

7 MS. FRASER: Not on my part. I know our
8 next witness is waiting. Because of the technical
9 issues, we got a late start. I would suggest maybe we
10 all stay on line, or I don't know how the court reporter
11 wants to handle that, in light of the issues, if we
12 should stay on the phone.

13 THE REPORTER: Do you want to be on the
14 record for this?

15 MS. FRASER: Yes.

16 THE REPORTER: I can't write and talk at
17 the same time.

18 MS. FRASER: Okay, then I guess that
19 answers that question, but do you have a preference
20 because of the issues?

21 THE WITNESS: I think that we -- may I
22 suggest that we close and go off the record because I do
23 need to get my phone back.

24 MS. FRASER: Yes, that's a very good point,
25 but, Counselor, I know that we did discuss some of our

1 concerns regarding these technical difficulties.
2 Hopefully, we have figured those out. I know we did
3 lose some time on them.

4 And also I just wanted to comment on the
5 record too, because we didn't state appearances, that
6 Jennifer Fraser on behalf of the Petitioner is present
7 with the witness, Mr. Sonson, in Hawaii. Mr. Mullarkey,
8 co-counsel for Petitioner, is attending by telephone in
9 DC, and I understand counsel for registrant, Ms. Pitts,
10 is in another location by telephone.

11 MS. PITTS: Okay, off the record.

12 (Discussion off the record.)

13 THE WITNESS: I'm waiving signature.

14 (Deposition concluded at 11:46 a.m.)
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C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, PATRICIA ANN CAMPBELL, CSR 108, State of Hawaii, do hereby certify:

That on December 3rd, 2014, appeared before me ALEX M. SONSON, the witness whose 52 page deposition is contained therein; that prior to being examined he was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii State Legislature;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents to the best of my ability a true and correct transcript of the proceedings had in the foregoing matter;

That pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and makes changes to this transcript was made by the deponent and/or their attorney prior to the completion of the deposition.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 13th day of December, 2014, in Honolulu, Hawaii.

PATRICIA ANN CAMPBELL, CSR 108
Certified Shorthand Reporter
State of Hawaii

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In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Alex Sonson Deposition
Exhibit: 1
Exhibit Offered by Respondent
12/3/14

**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

LuckyU Enterprises, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057023
)	
John Aragona,)	
)	
Registrant/Respondent.)	

NOTICE OF SUBPOENA TO TESTIFY AT A DEPOSITION

To: Jennifer Fraser
Daniel P. Mullarkey
Novak Druce Connolly Bove + Quigg LLP
1875 Eye Street, NW, 11th Floor
Washington, DC 20006

Please take notice that on December 2, 2014, Respondent, John Aragona, has caused to be issued the enclosed Subpoena to Testify at a Deposition in the above captioned matter directed to Alex M. Sonson, Waipahu Office Plaza, 94-210 Pupukahi St. Suite 204, Waipahu, HI 96797.

Respectfully submitted,

By: /s/ Jamie N. Pitts
Jamie N. Pitts
Florida Bar No. 72632
887 W Marietta Street, NW
Ste. M-105
Atlanta, GA 30318
(941) 893-7751– telephone
(855) 224-7819– facsimile
Email: jamiennpitts@jnplawfirm.com
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December 2014 a true and correct copy of the foregoing **Notice of Subpoena to Testify at a Deposition** was served by First Class Mail, postage prepaid, on Petitioner's Counsel, Jennifer Fraser and Daniel P. Mullarkey, Novak Druce Connolly Bove + Quigg LLP 1875 Eye Street, NW, 11th Floor Washington, DC 20006, with a courtesy copy served via e-mail to Jennifer.Fraser@novakdruce.com and daniel.mullarkey@novakdruce.com.

By: /s/ Jamie N. Pitts
Jamie N. Pitts

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 4220686
Mark: GIOVANNI'S ALOHA FOODS
Registration Date: October 9, 2012

In the matter of Trademark Registration No. 4224400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration Date: October 16, 2012

In the matter of Trademark Registration No. 4232569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration Date: October 30, 2012

In the matter of Trademark Registration No. 4248595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration Date: November 27, 2012

LuckyU Enterprises, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057023
)	
John "Giovanni" Aragona,)	
)	
Registrant.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that on Wednesday, December 3, 2014, Registrant, John "Giovanni" Aragona, will take the testimony deposition upon oral examination of Alex M. Sonson at the Offices of Ralph Rosenberg Court Reporters, Inc., 1001 Bishop Street, Suite 2460, Honolulu, Hawaii 96813 at 9:30 AM before an officer authorized to administer oaths.

You are invited to attend and cross-examine.

Date: November 19, 2014

Respectfully submitted,
John "Giovanni" Aragona

s/Jamie N. Pitts

Jamie N. Pitts

Florida Bar No. 72632

The Law Office of Jamie N. Pitts, Esq.

3340 Wood Thrush Dr., Ste. 341

Punta Gorda, FL 33950

(941) 893-7751– telephone

(855) 224-7819– facsimile

Email: jamienpitts@jnplawfirm.com

Counsel for Registrant

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **NOTICE OF DEPOSITION** was served on November 19, 2014 to Petitioner's counsel via U.S. Mail with a courtesy copy sent via email as follows:

Jennifer Fraser
NOVAK DRUCE CONNOLLY BOVE & QUIGG LLP
1875 Eye Street, N.W.
Eleventh Floor
Washington, D.C. 20006

Jennifer.fraser@novakdruce.com
Daniel.mullarkey@novakdruce.com

/s/Jamie N. Pitts
Jamie N. Pitts

UNITED STATES DISTRICT COURT

for the

District of Hawaii

LuckyU Enterprises, Inc.

Plaintiff

v.

John "Giovanni" Aragona

Defendant

Civil Action No. Cancellation No. 92057023

(If the action is pending in another district, state where:

PTO Trademark Trial and Appeal Board)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Alex M. Sonson

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 1001 Bishop Street, Suite 2460
Honolulu, HI 96813

Date and Time: 12/03/2014 9:30 am

The deposition will be recorded by this method: stenographic means.

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

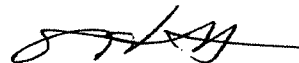
All documents relating to: John Aragona and/or the Giovanni's Aloha Shrimp business, specifically the Amendment to the Asset Purchase Agreement dated November 7, 1997

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/02/2014

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) John "Giovanni" Aragona

, who issues or requests this subpoena, are:

Firm Name: The Law Office of Jamie N. Pitts, Esq., PA Attorney: Jamie N. Pitts
Email: jamienpitts@jnplawfirm.com Phone: 941-893-7751
887 W Marietta Street, NW, Ste. M-105, Atlanta, GA 30318

Civil Action No. Cancellation No. 92057023

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Alex M. Sonson
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

In the matter of Trademark Trial and Appeal
Board
Cancellation No. 92057023

Alex Sonson Deposition
Exhibit 2
Exhibit Offered by Respondent
12/3/14

Revised 11/4/97

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made this 7 ^{November} day of ~~October~~, 1997, by and between JOHN ARAGONA AND CONNIE ARAGONA, whose business and post office address is 59-619 KAWOA PL HALEIWA HI 96711 (hereinafter referred to as "Seller") and NITSCHKE ENTERPRISES, INC., a Hawaii corporation, whose business and post office address is 57-120 Lalo Kuilima Way, Kahuku, HI 96731 (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, the Seller is the present owner of that sole proprietorship known as "Giovanni's Aloha Shrimp", which is a retail food business specializing in the sale of cooked shrimp lunches from a lunchwagon at locations in Kahuku and Haleiwa;

WHEREAS, the Buyer desires to purchase and the Seller desires to sell a portion of the assets of the business operated by Seller, known as "Giovanni's Aloha Shrimp", and Buyer desires to purchase the exclusive rights in the State of Hawaii, to (a) use the name "Giovanni's Aloha Shrimp", (b) use for the purposes of selling food either retail or wholesale, the Giovanni's Scampi and Giovanni's Hot and Spicy shrimp sauces (the Seller shall retain the right to sell and market Giovanni's Scampi, and Hot and Spicy shrimp sauces only for retail sales), and (c) sell shrimp at retail or wholesale using the present recipe that Seller has for Giovanni's Aloha Shrimp Scampi and Giovanni's Aloha Shrimp Hot and Spicy; and

WHEREAS, Seller desires to assign and Buyer is willing to accept the assignment for that lease that the Seller presently has at two sites situate in Kahuku and Haleiwa and at an additional site in Kahuku which the Seller presently uses to prepare his food; and

WHEREAS, the parties to this Agreement desire to set forth in writing their agreement regarding the purchase of all of the assets of "Giovanni's Aloha Shrimp", subject only to the exclusions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in consideration of monies exchanged, the parties hereby agree to the following:

1. Asset Purchase and Assignment of Lease

The Seller agrees to sell and the Buyer agrees to purchase from the Seller, all of those assets of the Seller that are specifically listed in Exhibit "A" attached herein as made a part hereof. All such assets shall be transferred to the Buyer by the Seller in good condition at the time of closing. The obligation of the Buyer to buy the assets of the Seller as described in Exhibit "A" are contingent upon the fulfillment of the contingencies set forth in Paragraph 3 herein. The Seller also agrees, as an integral part of this Agreement, to assign to Buyer the rights and obligations of the Tenant or Lessee in that certain leases for (a) that property situate in Haleiwa where Seller presently operates a lunchwagon, (b) that property situate in Kahuku, at the site of the former Ahi's restaurant, where Seller presently operates a lunchwagon, and (c) that property situate in Kahuku (said property is a part of the same property that the Seller presently uses to operate his lunchwagon) that is presently used as the preparation room for the preparation of the food.

2. Consideration

The Buyer agrees to pay the Seller the sum of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00), which shall be paid into escrow at Closing. This sum shall be paid as follows:

A. A deposit of FIVE THOUSAND DOLLARS (\$5,000.00), which shall be deposited into escrow upon execution of this document. This deposit shall be fully refundable until November 21, 1997 or until all of the contingencies in Paragraph 3 are met. Any interest on this deposit shall be credited to the Buyer.

B. The balance to be paid to escrow at closing.

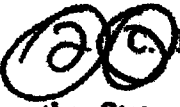
3. Contingencies

The obligations of the Buyer under this Agreement are contingent upon the following being met on the dates specified herein:

A. This Agreement is contingent upon the Buyer and Seller obtaining consent from the landlord on both leases, that is the lease for the Kahuku property and the lease for the Haleiwa property, to assign the rights and obligations of the Tenant or Lessee in both leases to the Buyer or to Troy Nitsche. This Agreement is also contingent on the Buyer obtaining a three year lease for the Kahuku site and the lease terms for said site being and monthly rent of EIGHT HUNDRED DOLLARS (\$800.00) with annual rent increases of TEN PERCENT (10%) of the previous year's rent. The Buyer and Seller shall cooperate in obtaining said consent, but it shall be the sole responsibility of the Seller to obtain the consents from both landlords prior to Closing. The consent, including but not limited to the provision that the Kahuku lease is a three year lease along with the stated lease

terms, shall be obtained by 5:00 p.m. on Friday, November 21, 1997. If said consent is not obtained by said date and time, this offer shall be null and void and all deposits shall be returned by the Seller to the Buyer immediately.

B. This Agreement is contingent upon the Seller conveying to the Buyer all of the equipment listed in Exhibit "A" attached, hereto, without any liens or encumbrances.

 C. This Agreement is contingent upon the Seller and Buyer jointly owning the State of Hawaii trademark registration to the name "Giovanni's Aloha Shrimp". The Seller shall, prior to closing, provide the Buyer with evidence that said trade name is registered by the Seller in the State of Hawaii.

D. This Agreement is contingent upon the Buyer obtaining financing for the purchase price. The Buyer shall notify the Seller on or before 5:00 p.m. on Friday, November 21, 1997, if the Buyer has been able to obtain financing. If the Buyer is not able to obtain financing, then the Buyer may cancel this Agreement and receive a full refund of all deposits.

E. The obligations of the parties under this Agreement are contingent upon the Seller passing a Department of Health Inspection on the Date of Closing. If the applicable sites do not pass the Department of Health Inspection on said date, then the Closing shall be delayed until such time that the Seller does pass said inspection. If said inspection is not passed within thirty (30) calendar days of the scheduled Date of Closing, then this agreement shall be canceled, the buyer shall receive a full refund of any deposits, and all obligations by and between the parties shall be null and void.

4. Closing Date.

The Closing Date of this Asset Purchase Agreement shall be ~~Friday,~~
~~December 15, 1997~~
November 28, 1997. Escrow shall be with Island Title, the escrow officer shall be Nina Arakawa.

2/4
TEA
JK

5. Representations of Seller to Buyer.

The Seller makes the following representations regarding the assets being transferred to the Buyer:

A. Seller represents they are the sole owner of the assets listed in Exhibit "A" and that they will have the right and authority to sell and deliver the same in accordance with this Agreement and that the Seller will, pursuant to this Agreement, transfer valid legal title of all the assets listed in Exhibit "A", free and clear of all liens, encumbrances and claims of every kind.

B. Seller will at the request of Buyer, execute and deliver to Buyer all such further assignments, endorsements and other documents as the Buyer may reasonably request to complete such sale of the assets listed in Exhibit "A".

C. The Seller hereby covenants with the Buyer that he has not placed any mortgage or any other liens upon said assets listed in Exhibit "A".

D. Seller represents that they are a lessee as to both the Kahuku property (both areas) and the Haleiwa property that are described herein and that they have the right to occupy the leased premises at both sites and that as of the date of this Agreement no legal action has been taken against them for summary possession or any removal from either premises.

E. Seller is the only individual or entity that owns any rights to the Giovanni's Scampi, and Giovanni's Hot and Spicy Sauces and the Seller has the full right to contract with the Buyer as to any agreement regarding restricting the sale and use of said sauces.

F. Seller represents that there are no actions, proceedings, or investigations pending or, to the knowledge of the Seller, threatened or affecting the Seller, that are before or by any federal, state, municipal or other governmental agency, department, commission, board, bureau, agency or instrumentality, which would make it impossible for Seller to consummate this Agreement with the Buyer or which would make the assets listed in Exhibit "A" subject to lien.

G. All representations and warranties of the Seller contained in this Paragraph 5 shall survive Closing.

6. Payment of Closing Fees and Costs.

All closing costs shall be equally divided by the parties except that the Seller shall be solely responsible for bearing any costs relating to fulfilling the contingencies described herein and any other consents. All real property taxes and rent shall be prorated as of the Date of Closing. Each party shall bear their own attorneys fees and costs.

7. Buyer's Closing Obligations.

On or before the Closing Date, the Buyer shall:

A. Have paid into escrow all of the purchase price described in Paragraph 2 herein.

B. Deposit into Escrow sufficient cash to cover (i) closing costs, and (ii) all other sums of money required to be paid by the Buyer pursuant to this Agreement.

C. Execute and acknowledge all documents necessary to consummate the transactions contemplated by this Asset Purchase Agreement (including all escrow instructions and closing statements).

D. Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions which are required to be performed or satisfied by the Buyer under this Asset Purchase Agreement.

8. Seller's Closing Obligations.

On or before the Closing Date, the Seller shall:

A. Deliver to the Buyer all of the assets listed in Exhibit "A" attached hereto.

B. Execute and acknowledge a bill of sale transferring all of the assets listed in Exhibit "A" from the Seller to the Buyer.

C. Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions which are required to be performed or satisfied by the Seller under this Asset Purchase Agreement.

D. Execute and acknowledge all documents necessary to consummate the transactions contemplated by this Purchase Agreement, including but not limited to documents that would transfer the registration of the trade name "Giovanni's Aloha Shrimp" into a joint ownership between the Buyer and Seller.

E. Possession. Seller shall deliver the keys and any codes for security devices to the Buyer at Closing. Any warranties in the possession of the Seller for the equipment or appliances shall also be delivered to Buyer at Closing.

9. Buyer Does Not Assume Debts of Seller.

It is expressly understood and agreed between the parties that the Seller is responsible for paying any and all debts incurred by the Seller prior and after the Date of Closing. The Buyer does not and will not assume any and all debts incurred by the Seller. The Seller hereby indemnifies and holds harmless the Buyer from any claim, liability or cause of action for any debt, claim, or action brought against the Seller that arose from any actions or transactions. It is further agreed between the parties that Seller shall retain the right to collect any accounts receivable for debts owed to Seller that were incurred prior to the Date of Closing.

10. Further Agreements Between the Parties That Will Survive Closing.

In consideration of the mutual covenants contained herein, the parties hereby covenant and agree that the following are also terms and conditions of this Agreement that will survive Closing. The parties covenant and agree that these terms and conditions may be fully enforced by either party after Closing and that any breach of the following conditions shall be considered to be a breach of this Agreement:

A. The only restriction on the Buyer's use of the trade name "Giovanni's Aloha Shrimp" shall be that the Buyer shall sell at least a half pound of shrimp in the plate lunches sold by the Buyer after acquiring the Seller's business and the Buyer shall use as marination and sauces for the shrimp sold by the Buyer after acquiring the Seller's business both the scampi sauce, and the hot and spicy sauce

that the Seller presently uses. If in the event however, the aforesaid scampi and hot and spicy sauce is not available to the Buyer after the buyer acquires the Seller's business, then the Buyer shall have the right to use a replacement sauce, subject however, to the terms set forth in Paragraph 10-C herein. The joint ownership of the trade name "Giovanni's Aloha Shrimp" shall apply only to the State of Hawaii, and the Buyer covenants and agrees not to register said trade name outside the State of Hawaii.

B. The Buyer shall have the right to purchase from the Seller the Giovanni's Scampi, and Giovanni's Hot and Spicy sauce that is presently used in the cooking and preparation of that product presently called "Giovanni's Aloha Shrimp". The Buyer shall have the right to purchase said sauces in sizes of gallon jugs or larger and the Buyer shall have the exclusive right to purchase said sauces in sizes of gallon jugs or larger at wholesale cost. The Buyer shall have the right to purchase said sauces at the Seller's cost from the bottler plus shipping cost, said cost however, being exclusive of labor. The seller may sell said sauces in the retail market but the Seller covenants and agrees that he shall not (i) sell said sauces in any containers larger than 12 ounces, (ii) sell said sauces to any person or entity other than the Buyer at wholesale (however, this shall not prohibit the Seller from selling his sauces, with the limitation on the sizes as noted above, to any food wholesaler for intended resale on the consumer market only), (iii) sell said sauces to any person or entity that will use said sauces to prepare and sell a food product for retail sale, and (iv) sell the sauce to any person or entity that will compete

against the Buyer. The Seller's obligations under this paragraph shall be limited to the State of Hawaii, and shall not apply to sales outside the State of Hawaii.

C. The parties acknowledge that Seller has contracted Hagerty Foods of California to bottle Seller's sauces and that the Buyer will be buying Seller's sauces through Hagerty Foods. Until the sauce becomes available through Hagerty foods and the Buyer receives delivery of its first complete order, Seller will be responsible for supplying the Buyer with an adequate quantity of sauce at the cost of ingredients. Seller and Buyer mutually covenant and agree that if Hagerty Foods, for whatever reason, cannot supply the Buyer with the shrimp sauces described herein in the required quantities or cannot supply the sauces to the Buyer at the cost of the product plus shipping (the failure of Hagerty Foods to provide said sauces shall be said to occur if the Seller cannot provide the Buyer with any order within twenty ^{30 (10) TEN} (20) calendar days of the Buyer making the order) then the following shall apply:

i. Seller shall first have the right to provide Buyer with the sauce that has become unavailable to Buyer. Seller shall however, provide the sauce to the Buyer at a price no higher than that which the Buyer was paying Hagerty Foods.

ii. In the event that the Seller does not provide the Buyer with the sauce within ten (10) calendar days of the date that Hagerty Foods fails to provide the order to the Buyer, then the Seller shall provide the Buyer with the recipes for said shrimp sauces. Said recipes, shall be subject, however, to a confidentiality agreement between the parties.

iii. In the event that the Buyer receives neither the sauce or the recipes in a timely fashion, then the Buyer may, at the Buyer's option, use a replacement sauce for the period that the Seller's sauces are unavailable to the Buyer. By using a replacement sauce the Buyer does not waive any rights or remedies that it may have under this Agreement as the use of said sauce is simply a means to allow the Buyer to mitigate any damages. The Buyer shall, in such circumstances, retain the right to take legal action against the Seller to enforce any provision of this Agreement.

D. Seller agrees to provide the Buyer with training for a period of two weeks after Closing. Said training shall be provided at no cost to the Buyer and shall inform the Buyer on all aspects of operating the business.

11. Compliance with Antitrust Act.

The parties hereby represent by executing this Agreement that they are not subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvement Act of 1976. If the parties are so required to report then the parties shall cooperate with each other to meet the requirements of this Act.

12. Compliance with Bulk Sales Act.

The parties hereby covenant and agree that the Seller is subject to the reporting requirements of the Bulk Sales Act under the Hawaii Revised Statutes. The Seller shall be solely responsible for meeting any reporting requirements under said Bulk Sales Act.

13. Cooperation of Parties in Transition: Inspection of Books.

Seller and Buyer shall each use reasonable efforts and cooperate in good faith to achieve an orderly transition relating to the leased premises described herein.

14. Cancellation of Agreement.

In the event that the Seller fails to fulfill any of the contingencies listed in this Agreement by the dates set forth, unless there is written agreement to the contrary, this Agreement shall be null and void if any of those conditions are not met. Upon cancellation of this Agreement the Buyer shall receive a full refund of any deposits.

15. Non-Competition Clause.

In consideration of the covenants contained herein, the Seller agrees not to operate, own, participate in, manage, supervise, or engage in consulting any retail food business in the State of Hawaii for a period of five (5) years after the Date of Closing, except that the Seller may participate in a catering business, catering other types of food in addition to the product known as "Giovanni's Aloha Shrimp" if and only if the Seller purchases all the required shrimp, already cooked and prepared, from the Buyer at a price of the Buyer's cost plus a sixty percent (60%) mark-up. The Seller further covenants and agrees that they shall not use the name "Giovanni's" or "Giovanni" in the operation of any business in the State of Hawaii for a period of five (5) years after the Date of Closing, except that (A) the Seller may market and sell any sauces under the name Giovanni's provided that the market and sale of said sauces does not violate any other term of this Agreement, and (B) the Seller may open a sit-down restaurant that sells the shrimp under the aforesaid name if and only if said restaurant serves the shrimp only for dinner (after 6:00 p.m. daily). The Seller further covenants and agrees that under no circumstances will

they operate, own, participate in, manage, supervise, or engage in consulting any lunchwagon operation in the State of Hawaii without the express written consent of the Buyer. The terms of this Paragraph shall survive Closing and the parties covenant and agree that without the existence of this clause that the Buyer would not have entered into this Agreement.

16. Event of Default.

The following shall constitute and "Event of Default" this Agreement:

A. Buyer or Seller shall fail to pay any sums of money when due under this Purchase Agreement, or fail to observe or perform any other term or provision to be observed or performed by Buyer or Seller under this Agreement, or

B. Buyer or Seller shall acquiesce in writing to, or fail to controvert in a timely manner, any petition filed against Buyer or Seller in an involuntary case under the federal bankruptcy laws, or

C. Buyer or Seller fails to observe or perform any term or provision of this Agreement that is to survive Closing.

17. Remedies Upon Default.

Upon the occurrence of any "Event of Default", the non-defaulting party shall have the following rights and remedies:

A. In the case of the Seller being the non-defaulting party, the Seller's remedies shall be limited to canceling this Purchase Agreement and, if applicable, retention of the deposit described in Paragraph 2A herein.

B. In the case of the Buyer being the non-defaulting party, the Buyer may either:

(i). Sue the Seller for and obtain damages and/or specific performances; or

(ii) The Buyer may choose to cancel this Agreement in accordance with the terms contained in paragraph 11 herein, in which case the deposit shall then be fully refunded to the Buyer, and upon cancellation there shall be no further obligations between the parties.

18. Time is of the Essence.

Time is hereby expressly declared to be of the essence of this Purchase Agreement. Unless otherwise specified herein, the due date for the receipt of any notices or sum of money shall be 5:00 p.m., H.S.T., of each respective day.

19. Applicable Law.

This Purchase Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action hereunder shall be filed in the State of Hawaii judicial system only and the Buyer and Seller hereby submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii.

20. Attachments to this Agreement.

The attachment marked as Exhibit "A" shall be made a part to this Agreement.

21. General Provisions.

A. This is the sole and only agreement between the parties. Any modification of this Agreement must be in writing and executed by both of the parties hereto.

B. If any part of this Agreement is deemed to be invalid for any reason, this shall not invalidate this entire agreement but shall only invalidate that one provision and the remainder of this agreement shall remain in full force and effect.

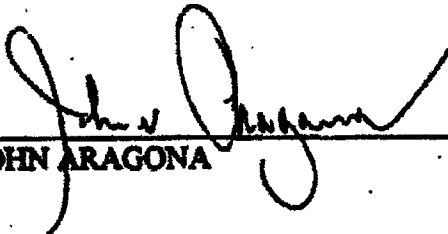
C. This Agreement shall be construed to give the Buyer full rights to use the name "Giovanni's Aloha Shrimp" without any limitations placed upon the Buyer on the use of said name.

D. This Agreement has been reviewed by each party and their respective counsel. Although this Agreement may have been drafted by one party, the Agreement shall be construed as if it had been drafted jointly by the parties and shall not be interpreted on behalf of one party as against the other.

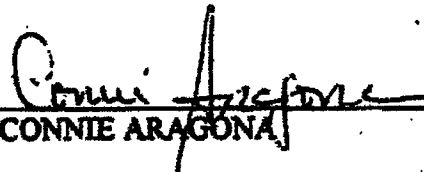
E. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purpose, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

F. Facsimile copies shall be treated as originals for the purposes of this
Asset Purchase Agreement.

DATED: Honolulu Hawaii, November 7, 1997.



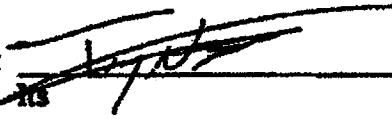
JOHN ARAGONA



CONNIE ARAGONA

"Seller"

NITSCHKE ENTERPRISES, INC., a
Hawaii corporation

BY: 

its
"Buyer"

ASSET PURCHASE AGREEMENT, by and between JOHN ARAGONA and CONNIE
ARAGONA and NITSCHKE ENTERPRISES, INC.

EXHIBIT "A"

GIOVANNI'S ALOHA SHRIMP INVENTORY

Inventory - Kahuku Truck: *OKA*

- | | |
|---|---|
| 1 - 1952 Chevrolet Truck (sold as is) <i>TEN</i> | 3 - Cork boards |
| 1 - Ladder | 3 - Extension cords (large gauge) |
| 1 - Refrigerator | 1 - Broom |
| 1 - Single burner stove | 1 - Cash box |
| 1 - Double Burner Stove | Assorted markers and bungee cords |
| 3 - Strainers | 1 - Plastic hand rinse container |
| 5 - A-frame signs | 1 - Large plastic tub (holds sauces next to cooler) |
| 2 - Coolers | 3 - Small plastic trays (on serving counter) |
| 3 - Spray bottles | 2 - Plastic jars (tickets and tips) |
| 6 - Scampi pans | 5 - Shoyu dispensers |
| 2 - Hot & Spicy pans | 1 - Salt & pepper shaker combo |
| 3 - Grilled pans | 1 - Toothpick dispenser |
| 1 - Crate (spray bottles & trash bags) | 1 - Kiddy chair |
| 14 - Stainless steel trays (Scampi containers) | 1 - Black tarp |
| 10 - Stainless steel tray tops | 3 - Rakes |
| 8 - White plastic tubs (cut & uncut containers) | 6 - Cutting knives (truck and house) |
| 1 - Hot dog container | 1 - Chopping knife |
| 3 - Trash cans (2 outside - large; 1 inside - small) | 3 - Rubber floor mats |
| 2 - Large rice inserts | 1 - Trailer |
| 2 - Small rice inserts | 1 - Trailer sign |
| 2 - Large rice cookers | 3 - Tongs |
| 2 - Small rice cookers | 2 - Ladles |
| 2 - Condiment containers - stainless steel | 1 - Phillips head screw driver |
| 2 - Blue tarps | 1 - Flat head screw driver |
| 1 - Lemon wedge container | 1 - Metal grease container |
| 6 - Plastic containers (napkins, forks, etc.) | 1 - Spatula |
| 2 - Rice scoopers | 1 - Can opener |
| 1 - Circular plastic container | |
| 4 - Rinsing jars | |
| 2 - Buckets | |
| 1 - Circular fan | |
| 5 - Plastic trays ("To go" section) | |
| 1 - Set of jumper cables | |
| 2 - Cutting boards | |
| 1 - Stereo | |
| 9 - Tables (8 vinyl & 1 wooden with parasol and base) | |
| 1 - 30' x 20' tent | |
| 1 - Clipboard | |
| 1 - Lighting system for tent | |
| 2 - Propane tanks | |

Inventory - Preparation Room:

- | | |
|--|------------------------------------|
| 1 - Hose and nosel | 2 - Extension cords (small guage) |
| 1 - Refrigerator | 2 - Spray bottles |
| 2 - Freezers, 1 single capacity, 1 double capacity | 1 - Dust pan and brush set |
| 1 - Coffee machine and carafe | 1 - Pair vice-grips |
| 3 - Night stands | 3 - Rice spoons |
| 1 - 3 basin stainless steel sink & rinsing handle | 1 - Spatula |
| 1 - Stainless steel work table | 1 - Can opener |
| 1 - 20 gallon cooler | 1 - Large "Giovanni's" wooden sign |
| 1 - 20 gallon coffee/tea dispenser | |
| 2 - 2' x 2' circular fans | |
| 1 - Bar stool | |
| 1 - Ratan table | |
| 4 - Ratan chairs | |
| 1 - 8' x 3' Stocking table | |
| 2 - Trash bins (small) | |
| 1 - Air conditioner | |
| 1 - 5' x 2' desk and chair | |
| 1 - Futon frame | |
| 6 - Window shades | |
| 1 - Paper towel dispenser | |
| 1 - Hi-fi | |
| 2 - Table lamps | |
| 2 - Mops | |
| 1 - Large clock | |
| 1 - Pair walkie-talkies | |
| 1 - Ceramic washing sink (outside) | |
| 2 - Brooms | |
| 2 - First-aid kits | |
| 1 - Blue tarp | |
| 1 - Z Burner stove (working) | |
| 1 - Cork board | |
| 1 - Ice machine (outside) | |
| 1 - Scampi pan (un-used) | |
| 2 - Large rice inserts | |
| 4 - Small rice inserts | |
| 3 - Cutting boards | |
| 3 - Propane tanks | |
| 1 - Box of order books | |
| 5 - Large plastic tubs (blue & green) | |
| 1 - Dirty linen container (outside) | |
| 1 - Gasoline container | |
| 1 - Large trash can (outside) | |
| 1 - Set of tongs | |
| 2 - Ladles (Large) | |

Inventory - Haleiwa Truck:

- 1 - 1977 Dodge Truck (sold to us) TRW
2 - Extension cords (Large gauge)
1 - Hose
2 - Scampi pans
1 - Hot & Spicy pan
1 - Grilled pan
2 - Small rice cookers
2 - Small rice inserts
1 - Refrigerator
2 - Shoyu dispensers
1 - Tip jar
1 - Stereo
1 - 2 Burner stove
3 - sets of tongs
1 - Ladle
1 - Rice scooper
1 - Small trash container
1 - Large trash can
2 - Tables
1 - A-frame sign
2 - Cutting knives
1 - Cutting board
1 - Strainer
3 - Stainless steel scampi containers
1 - Hot dog container
7 - Plastic trays (napkins, chopsticks, etc.)
1 - Propane tank
3 - Padlocks

- 1 - Toothpick dispenser
2 - Spray bottles
4 - Marker pens
1 - Cooler
1 - Pair of vice-grips
2 - Rinsing containers
1 - Fan
1 - Bucket
1 - Cash Box
1 - Black tarp
1 - Metal grease container

BUYER:

Nitsche Enterprises, Inc.

By: [Signature]

Its:

11/24/97

Date

SELLERS:

[Signature]
John Aragona

11/24/97
Date

[Signature]
Connie Aragona

11/24/97
Date

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Alex Sonson Deposition
Exhibit 3
Exhibit Offered by Respondent
12/3/14

FIRST AMENDMENT OF ASSET PURCHASE AGREEMENT
DATED NOVEMBER 7, 1997

THIS FIRST AMENDMENT OF ASSET PURCHASE AGREEMENT DATED NOVEMBER 7, 1997 is made and entered into, effective November ____, 1997, by and between JOHN ARAGONA and CONNIE ARAGONA, whose business and post office address is 59-618 Kawoa Place, Haleiwa, Hawaii 96712, (hereinafter referred to as "Seller") and NITSCHKE ENTERPRISES, INC., a Hawaii corporation, whose business and post office address is 57-120 Lalo Kuilima Way, Kahuku, Hawaii 96731 (hereinafter referred to as "Buyer");

WITNESSETH:

WHEREAS, pursuant to that certain unrecorded ASSET PURCHASE AGREEMENT DATED NOVEMBER 7, 1997 (the "Agreement") Seller has sold and Buyer has purchased a portion of the assets of Seller's business known as "Giovanni's Aloha Shrimp", which is a retail food business specializing in the sale of cooked shrimp lunches from a lunch wagon at locations in Kahuku and Haleiwa; ("Business"); and

WHEREAS, Seller and Buyer Lessee agree to amend the Agreement to change Seller's contingencies designated under paragraphs 3A stating, in pertinent part, that Seller's leases must be assigned to Buyer and that Landlord's consent must be obtained, and 3C stating, in pertinent part, that the Hawaii trademark registration to the name "Giovanni's Aloha Shrimp" must be jointly owned by Seller and Buyer;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and in the Agreement, Seller and Buyer agree to a first amendment of the Agreement as follows:

1. Landlord's Consent and Assignment Contingency. Seller and Buyer hereby agree that the Contingency requiring the Kahuku lease to be assigned to Buyer with the Landlord's consent shall be deleted and replaced with the following: Seller provide proof prior to closing that the Buyer has been named as a tenant on the existing lease with Campbell Estates as landlord. The Buyer understands that the consent of the Landlord, Campbell Estates, can not be obtained and that as such Buyer has agreed to be added onto the current lease with Seller.

2. Trademark Contingency. Paragraph 3C shall be deleted in its entirety and replaced with the following:

Seller shall provide evidence, prior to closing, that the trademark "Giovanni's Aloha Shrimp" is registered and owned in the State of Hawaii by the Seller. Seller hereby covenants and agrees to permit Buyer to use the trade name "Giovanni's Aloha Shrimp", at no cost to Buyer, for a period of ten years with

said term to be extended for an additional ten year period upon Seller's renewal of said trade mark, subject to remaining term in the Asset Purchase Agreement. Buyer shall be permitted to use said trade name in the State of Hawaii without any restrictions except for those restrictions noted in the Asset Purchase Agreement.

3. Amendment. Except as expressly amended in this First Amendment, the Agreement shall remain unchanged and shall continue in full force and effect. The Agreement, as hereby amended, is ratified and confirmed.

4. VEHICLES. As a part of the Asset Purchase Agreement, Seller shall transfer title to those vehicles listed in exhibit "B" from the Seller to the Buyer. Seller shall provide, prior to closing, proof that the Seller holds title to these vehicles and the actual transfer of the vehicles shall be effected through closing by the Seller tendering to Escrow an executed original of the certificate of title for both vehicles. No title abstract shall be required prior to closing but the Seller hereby warrants that there are no liens and encumbrances on said vehicles.

IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment of Asset Purchase Agreement, dated November 7, 1997, as of December _____, 1997, and shall be effective upon the signatures of Seller and Buyer .

JOHN ARAGONA

CONNIE ARAGONA

"Seller"

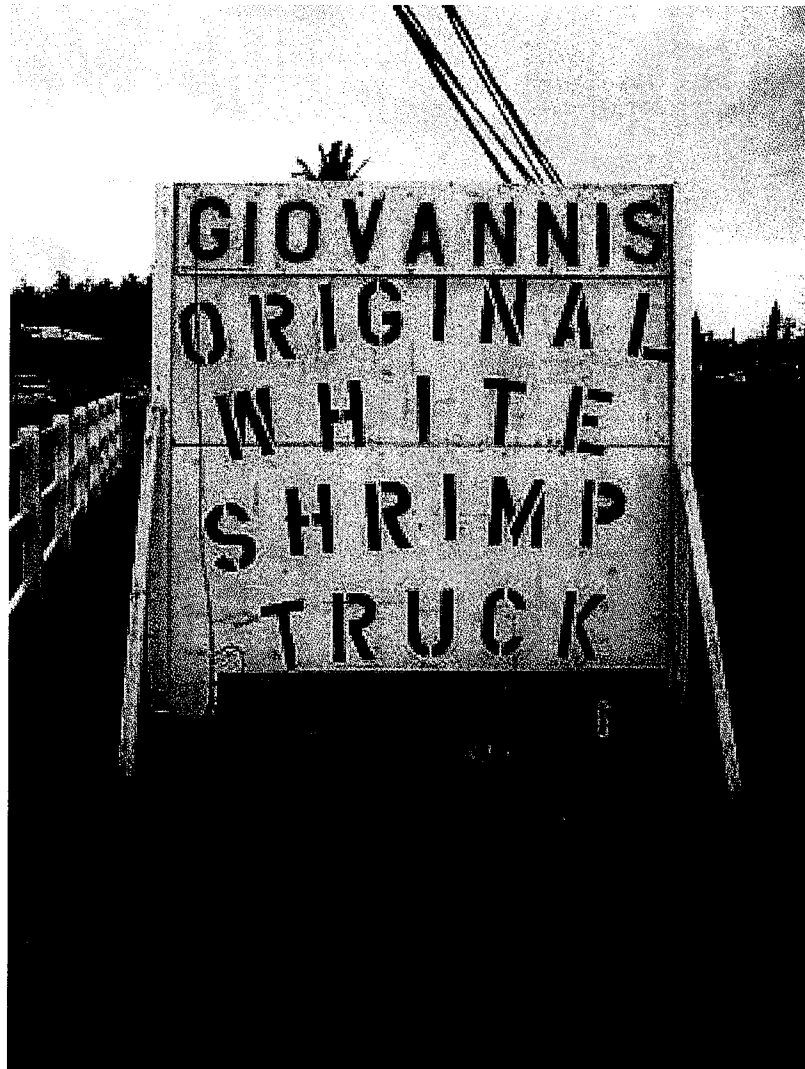
NITSCHKE ENTERPRISES, INC. A
Hawaii Corporation

By _____
Its

"Buyer"

In the matter of Trademark
Trial and Appeal Board
Cancellation No. 92057023

Alex Sonson Deposition
Exhibit 4
Exhibit Offered by Respondent
12/3/14







**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**STIPULATION REGARDING
CERTIFICATION OF ALEX SONSON DEPOSITION TRANSCRIPT**

Pursuant to Trademark Rule 2.123(b) and TBMP § 705, Petitioner and Respondent,
through their undersigned attorneys, hereby stipulate and agree to the following:

1) The parties stipulate and agree to the waiver of the requirement that Alex Sonson read
and sign the certified deposition testimony transcript of the deposition taken on December 3rd,

2014 as described in 37 C.F.R. § 2.123(e)(5). The parties reserve the right to all other objections.

Date: December 30, 2014

/Jamie N. Pitts
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Date: December 30, 2014

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